Supreme Court, U.S.
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No. 94-2110

In the
Supreme Court of the United States
October Term, 1994

MARION HOMMERDING,

Petitioner,

vs.

THE TRAVELERS INSURANCE COMPANY,
a Connecticut Corporation,

and

RIDGEWAY ENTERPRISES, INC.,
a South Dakota Corporation,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

RESPONDENT THE TRAVELERS INSURANCE COMPANY'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether this Court should review the decision of the Minnesota Court of Appeals affirming the trial court's grant of summary judgment where that decision was made independently of federal law and pursuant to considerations of state law only?

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Respondent The Travelers Insurance Company respectfully prays that the Court deny the petition for Writ of Certiorari.

STATEMENT OF JURISDICTION

Petitioner asserts that this Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1257 (1988). As explained more fully below, this matter does not involve any

federal constitutional or statutory issue upon which this Court may base jurisdiction.

RELEVANT STATUTORY PROVISIONS

This case involves application of the Minnesota Corporate and Partnership Farming Statute MINN. STAT. § 500.24 (1994) (the "Farm Act"), and MINN. STAT. § 8.31 subd. 3a (1994) (the "Private Attorney General Statute"). The pertinent sections of those laws are set forth in their entirety in Respondent's Appendix, in accordance with SUP.CT.R. 24.1(f).

STATEMENT OF THE CASE

Petitioner Marion Hommerding seeks to enforce the Farm Act as a purported "private attorney general," challenges as negligent per se Travelers Insurance Company's[1] 1988 sale to Ridgeway Enterprises, Inc. of certain farm land previously owned by Hommerding, and asserts that the state court decisions dismissing her claims denied her due process. The state trial court dismissed Hommerding's complaint on the grounds that it failed to state causes of action for negligence, fraud and interference with prospective opportunity, that she had admitted facts which compelled dismissal of her claim for interference with prospective opportunity, that she lacked standing as a private attorney general to enforce the Farm Act, and that Travelers' statutory defenses compelled dismissal of her fraud claim.

The Minnesota Court of Appeals affirmed, holding that a private cause of action did not exist, that Hommerding could not maintain an action for negligence per se based on an

[1] Travelers is a Connecticut Corporation owned by The Travelers Insurance Group, Inc., a Connecticut Corporation.

alleged violation of the Farm Act because the harm for which she sought redress was not the harm the Farm Act sought to prevent, and that Hommerding had insufficiently pleaded and inadequately supported her claim for fraud. *Hommerding v. The Travelers Ins. Co.*, No. 94-1843, slip op. (Minn. Ct. App. 1995). (A.2.) The Minnesota Supreme Court denied Hommerding's petition for further review. (A.1.) Hommerding petitions this Court for further review on the grounds that the state court decisions were wrong and, therefore, denied her due process.

STATEMENT OF FACTS

This case follows numerous cases, commencing in 1984, in which Hommerding sued Travelers for various alleged wrongdoings arising out of two farm loans which Travelers made to Hommerding in 1976 and 1981. Travelers foreclosed Hommerding's mortgages for non-payment and purchased the land at the foreclosure sale in 1984. (A.3.) Hommerding, however, continued to occupy the land, and Travelers was forced to evict her in 1986 because she refused to leave or to pay Travelers rent.

In February, 1988, Travelers received an offer for the land and gave Hommerding a right of first refusal in accordance with the Farm Act. (A.11.) Hommerding exercised her right of first refusal, but was unable to make the payments required of her. (A.11.) Travelers then sold the property to Ridgeway.

In seeking to overturn that sale, Hommerding alleges that she sought financing with which to exercise her right of first refusal, but that Travelers refused her and her prospective lender access to the premises. (Petitioner's Brief at 4.) However, she also admitted that a second lender promised to loan her the money to buy the land without the need for inspection. (A.21.)

SUMMARY OF THE ARGUMENT

Hommerding's Petition rests on three arguments: (1) the state courts incorrectly denied Hommerding standing as a private attorney general, (2) the state courts incorrectly interpreted the Farm Act in dismissing Hommerding's claims for negligence per se, and (3) the state court decisions denied her due process. Those arguments derive exclusively from decisions interpreting and applying state law. Hommerding has advanced no theory or argument to which this Court may extend its jurisdiction. Therefore, it should deny the Petition.

ARGUMENT

THE COURT DOES NOT HAVE JURISDICTION OVER THE QUESTIONS PRESENTED BY THIS PETITION BECAUSE THEY ARE ENTIRELY QUESTIONS OF STATE LAW.

The United States Supreme Court is vested with jurisdiction to review decisions of the highest courts of the states. 28 U.S.C. § 1257(a) (1988). However, this power is not unlimited.

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari *where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States*, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or

> the treaties or statutes of, or any commission held or authority exercised under, the United States.

Id. (emphasis added). This Court has incorporated that statutory provision into its rules of court. Supreme Court Rule 10 identifies the "character" of questions that may warrant its discretionary writ of certiorari:

* * * *

> (b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
>
> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

SUP.CT.R. 10.1. While the above "neither control[s] nor fully measur[es] the Court's discretion," *id.* at 10.1, it is apparent that some type of federal question must be presented in order properly to invoke this Court's jurisdiction.

As Justice Jackson observed:

> [t]his Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power

> over state judgments is to correct them to the extent that they incorrectly adjudge federal rights.

Herb v. Pitcairn, 324 U.S. 117, 125-26 (1945) (citations omitted). Justice Harlan followed that same reasoning twenty years later: "[t]his Court is always wary of assuming jurisdiction of a case from a state court unless it is plain that a federal question is necessarily presented, and the party seeking review here must show that we have jurisdiction of the case." *Department of Mental Hygiene of California v. Kirchner*, 380 U.S. 194, 197 (1965); *see also* 28 U.S.C. § 1257(a) (1988); SUP.CT.R. 10.1 (b)-(c).

Hommerding's petition does not meet the principles advanced in *Pitcairn* and *Kirchner* and is insufficient to invoke the Court's jurisdiction. *See McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 434 (1940) (holding that this Court will only review state court decisions in which federal questions were raised or addressed). Rather than basing her petition on a federal question, Hommerding argues that this Court should review the Minnesota courts' decisions because they contain errors of interpretation of Minnesota law (Petitioner's Brief at 6-16) and because those alleged errors denied her due process. (*Id.* at 17.)

In fact, her petition rests entirely on her disagreement with the state court decisions, and she offers no cogent argument for her assertion that those decisions denied her due process. The Minnesota Court of Appeals disposed of her claims entirely and correctly based on state law. *See Hommerding v. Travelers*. (A.2 - A.14.) It decided that Hommerding did not have standing to assert a cause of action under the Farm Act because the Farm Act does not explicitly authorize a private cause of action. (A-5.) That decision is consistent with Minnesota law. *See* MINN. STAT. § 500.24; *see also Bruegger v. Faribault County Sheriff's Dept.*, 497 N.W.2d 260 (Minn. 1993). The court of appeals also refused

to imply a private cause of action under the Farm Act. In reaching that decision, the court relied on the three factors established by this Court in *Cort v. Ash*, 422 U.S. 66, 78 (1975), and determined: (1) that it is the state, and not the individual farmer for whose benefit the statute was enacted; (2) that the Minnesota legislature did not indicate an intent to create such a cause of action; and (3) that the state reserved to itself enforcement of the statute. (A.6 - A.8.) That holding conforms to the language of the Farm Act itself: "it is in the interests of *the state* to encourage and protect the family farm. . . ." MINN. STAT. § 500.24, subd. 1 (emphasis added).

Similarly, the court of appeals declined, absent the express or implied legislative intent, to create a new cause of action under the Private Attorney General Statute. (*Id.* at A.4.) The Private Attorney General Statute provides that private remedies may be available to "any person injured by a violation of any of the laws referred to in subdivision 1. . . ." Subdivision 1 is limited to unfair, discriminatory, and other unlawful practices in business, commerce or trade. MINN. STAT. § 8.31, subd. 1. It does not refer to the Farm Act or to statutory categories including the Farm Act.

The court of appeals also rejected Hommerding's negligence per se argument, reasoning that the harm Hommerding allegedly suffered -- her inability to exercise a right of first refusal -- did not amount to the harm the statute sought to prevent. (A.10 - A.12.) That holding, too, comports with state law. *See Thies v. St. Paul's Evangelical Church*, 489 N.W.2d 277 (Minn. Ct. App. 1992).

Hommerding's Petition requests this Court to rewrite Minnesota law. It states that "[a] private attorney general cause of action under Minnesota Statutes, Section 500.24, *should exist* where the person bringing suit, a member of class [sic] protected by the statute, has been harmed by direct violation of the statute." (Petitioner's Brief at i.) (emphasis added). That request is beyond the scope of this Court's

authority. *See Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 124 (1978) (holding that the Due Process Clause does not empower the judiciary to act as a "superlegislature").

Finally, Hommerding's contention that "her constitutional rights to due process have been ignored by the Courts of the State of Minnesota" (Petitioner's Brief at 17), is insufficient to invoke the Court's jurisdiction. *See Bowe v. Scott*, 233 U.S. 658, 664-65 (1914) (holding that the contention that an ordinance effects a taking "without due process of law," with no reference to the U.S. Constitution, "affords no basis whatever for invoking the jurisdiction of this Court").

CONCLUSION

The Petition sets forth questions of state law only, and Hommerding has exhausted her remedies under state law. This Court is not the appropriate forum for resolution of those issues. Therefore, respondent Travelers Insurance Company respectfully requests that the Court deny the Petition for Writ of Certiorari.

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RESPONDENT'S APPENDIX

MINN. STAT. § 500.24 subdivisions 3 and 5

Subd. 3. Farming and ownership of agricultural land by corporations restricted. No corporation, limited liability company, pension or investment fund, or limited partnership shall engage in farming; nor shall any corporation, limited liability company, pension or investment fund, or limited partnership, directly or indirectly, own, acquire, or otherwise obtain an interest, whether legal, beneficial or otherwise, in any title to real estate used for farming or capable of being used for farming in this state. Livestock that are delivered for slaughter or processing may be fed and cared for by a corporation up to 20 days prior to slaughter or processing. Provided, however, that the restrictions in this subdivision do not apply to corporations or partnerships in clause (b) and do not apply to corporations, limited partnerships, and pension or investment funds that record its name and the particular exception under clauses (a) to (s) under which the agricultural land is owned or farmed, have a conservation plan prepared for the agricultural land, report as required under subdivision 4, and satisfy one of the following conditions under clauses (a) to (s):

(a) a bona fide encumbrance taken for purposes of security;

(b) a family farm corporation, an authorized farm corporation, a family farm partnership, or an authorized farm partnership as defined in subdivision 2 or a general partnership;

(c) agricultural land and land capable of being used for farming owned by a corporation as of May 20, 1973, or a

pension or investment fund as of May 12, 1981, including the normal expansion of such ownership at a rate not to exceed 20 percent of the amount of land owned as of May 20, 1973, or, in the case of a pension or investment fund, as of May 12, 1981, measured in acres, in any five-year period, and including additional ownership reasonably necessary to meet the requirements of pollution control rules;

(d) agricultural land operated for research or experimental purposes with the approval of the commissioner of agriculture, provided that any commercial sales from the operation must be incidental to the research or experimental objectives of the corporation. A corporation, limited partnership, or pension or investment fund seeking to operate agricultural land for research or experimental purposes must submit to the commissioner a prospectus or proposal of the intended method of operation, containing information required by the commissioner including a copy of any operational contract with individual participants, prior to initial approval of an operation. A corporation, limited partnership, or pension or investment fund operating agricultural land for research or experimental purposes prior to May 1, 1988, must comply with all requirements of this clause except the requirement for initial approval of the project;

(e) agricultural land operated by a corporation or limited partnership for the purpose of raising breeding stock, including embryos, for resale to farmers or operated for the purpose of growing seed, wild rice, nursery plants or sod. An entity that is organized to raise livestock other than dairy cattle under this clause that does not meet the definition requirement for an authorized farm corporation must:

(1) sell all castrated animals to be fed out or finished to farming operations that are neither directly or (sic)

indirectly owned by the business entity operating the breeding stock operation; and

(2) report its total production and sales annually to the commissioner of agriculture;

(f) agricultural land and land capable of being used for farming leased by a corporation or limited partnership in an amount, measured in acres, not to exceed the acreage under lease to such corporation as of May 20, 1973, or to the limited partnership as of May 1, 1988, and the additional acreage required for normal expansion at a rate not to exceed 20 percent of the amount of land leased as of May 20, 1973, for a corporation or May 1, 1988, for a limited partnership in any five-year period, and the additional acreage reasonably necessary to meet the requirements of pollution control rules;

(g) agricultural land when acquired as a gift (either by grant or a devise) by an educational, religious, or charitable nonprofit corporation or by a pension or investment fund or limited partnership; provided that all lands so acquired by a pension or investment fund, and all lands so acquired by a corporation or limited partnership which are not operated for research or experimental purposes, or are not operated for the purpose of raising breeding stock for resale to farmers or operated for the purpose of growing seed, wild rice, nursery plants or sod must be disposed of within ten years after acquiring title thereto;

(h) agricultural land acquired by a pension or investment fund or a corporation other than a family farm corporation or authorized farm corporation, as defined in subdivision 2, or a limited partnership other than a family farm partnership or authorized farm partnership as defined in subdivision 2, for which the corporation or limited partnership has documented

plans to use and subsequently uses the land within six years from the date of purchase for a specific nonfarming purpose, or if the land is zoned nonagricultural, or if the land is located within an incorporated area. A pension or investment fund or a corporation or limited partnership may hold such agricultural land in such acreage as may be necessary to its nonfarm business operation; provided, however, that pending the development of agricultural land for nonfarm purposes, such land may not be used for farming except under lease to a family farm unit, a family farm corporation, an authorized farm corporation, a family farm partnership, or an authorized farm partnership, or except when controlled through ownership, options, leaseholds, or other agreements by a corporation which has entered into an agreement with the United States of America pursuant to the New Community Act of 1968 (Title IV of the Housing and Urban Development Act of 1968, United States Code, title 42, sections 3901 to 3914) as amended, or a subsidiary or assign of such a corporation;

(i) agricultural lands acquired by a pension or investment fund or a corporation or limited partnership by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; provided, however, that all lands so acquired be disposed of within ten years after acquiring the title if acquired before May 1, 1988, and five years after acquiring the title if acquired on or after May 1, 1988, acquiring the title thereto, and further provided that the land so acquired shall not be used for farming during the ten-year or five-year period except under a lease to a family farm unit, a family farm corporation, an authorized farm corporation, a family farm partnership, or an authorized farm partnership. The aforementioned ten-year or five-year limitation period shall be deemed a covenant running with the title to the land against any grantee, assignee, or successor of the pension or

investment fund, corporation, or limited partnership. Notwithstanding the five-year divestiture requirement under this clause, a financial institution may continue to own the agricultural land if the agricultural land is leased to the immediately preceding former owner, but must divest of the agricultural land within the ten-year period. Livestock acquired by a pension or investment fund, corporation, or limited partnership in the collection of debts, or by a procedure for the enforcement of lien or claim on the livestock whether created by security agreement or otherwise after August 1, 1994, must be sold or disposed of within one full production cycle for the type of livestock acquired or 18 months after the livestock is acquired, whichever is later;

(j) agricultural land acquired by a corporation regulated under the provisions of Minnesota Statutes 1974, chapter 216B, for purposes described in that chapter or by an electric generation or transmission cooperative for use in its business, provided, however, that such land may not be used for farming except under lease to a family farm unit, a family farm corporation, or a family farm partnership;

(k) agricultural land, either leased or owned, totaling no more than 2,700 acres, acquired after May 20, 1973, for the purpose of replacing or expanding asparagus growing operations, provided that such corporation had established 2,000 acres of asparagus production;

(l) all agricultural land or land capable of being used for farming which was owned or leased by an authorized farm corporation as defined in Minnesota Statutes 1974, section 500.24, subdivision 1, clause (d), but which does not qualify as an authorized farm corporation as defined in subdivision 2, clause (d);

(m) a corporation formed primarily for religious purposes whose sole income is derived from agriculture;

(n) agricultural land owned or leased by a corporation prior to August 1, 1975, which was exempted from the restriction of this subdivision under the provisions of Laws 1973, chapter 427, including normal expansion of such ownership or leasehold interest to be exercised at a rate not to exceed 20 percent of the amount of land owned or leased on August 1, 1975, in any five-year period and the additional ownership reasonably necessary to meet requirements of pollution control rules;

(o) agricultural land owned or leased by a corporation prior to August 1, 1978, including normal expansion of such ownership or leasehold interest, to be exercised at a rate not to exceed 20 percent of the amount of land owned or leased on August 1, 1978, and the additional ownership reasonably necessary to meet requirements of pollution control rules, provided that nothing herein shall reduce any exemption contained under the provisions of Laws 1975, chapter 324, section 1, subdivision 2;

(p) an interest in the title to agricultural land acquired by a pension fund or family trust established by the owners of a family farm, authorized farm corporation or family farm corporation, but limited to the farm on which one or more of those owners or shareholders have resided or have been actively engaged in farming as required by subdivision 2, clause (b), (c), or (d);

(q) agricultural land owned by a nursing home located in a city with a population, according to the state demographer's 1985 estimate, between 900 and 1,000, in a county with a population, according to the state demographer's 1985

estimate, between 18,000 and 19,000, if the land was given to the nursing home as a gift with the expectation that it would not be sold during the donor's lifetime. This exemption is available until July 1, 1995;

(r) the acreage of agricultural land and land capable of being used for farming owned and recorded by an authorized farm corporation as defined in Minnesota Statutes 1986, section 500.24, subdivision 2, paragraph (d), or a limited partnership as of May 1, 1988, including the normal expansion of the ownership at a rate not to exceed 20 percent of the land owned and recorded as of May 1, 1988, measured in acres, in any five-year period, and including additional ownership reasonably necessary to meet the requirements of pollution control rules;

(s) agricultural land owned or leased as a necessary part of an aquatic farm as defined in section 17.47, subdivision 3.

* * *

Subd. 5. Enforcement. With reason to believe that a corporation, limited partnership, or pension or investment fund is violating subdivision 3, the attorney general shall commence an action in the district court in which any agricultural lands relative to such violation are situated, or if situated in two or more counties, in any county in which a substantial part of the lands are situated. The attorney general shall file for record with the county recorder or the registrar of titles of each county in which any portion of said lands are located a notice of the pendency of the action as provided in section 557.02. If the court finds that the lands in question are being held in violation of subdivision 3, it shall enter an order so declaring. The attorney general shall file for record any such order with the county recorder or the registrar of titles of each county in

which any portion of said lands are located. Thereafter, the pension or investment fund, limited partnership, or corporation owning such land shall have a period of five years from the date of such order to divest itself of such lands. The aforementioned five-year limitation period shall be deemed a covenant running with the title to the land against any pension or investment fund, limited partnership, or corporate grantee or assignee or the successor of such pension or investment fund, limited partnership, or corporation. Any lands not so divested within the time prescribed shall be sold at public sale in the manner prescribed by law for the foreclosure of a mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law.

MINN. STAT. § 831 subdivisions 1 and 3a

8.31. Additional duties of the attorney general

Subdivision 1. Investigate offenses against the provisions of certain designated sections; assist in enforcement. The attorney general shall investigate violations of the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade, and specifically, but not exclusively, the nonprofit corporation act (sections 317A.001 to 317A.909), the act against unfair discrimination and competition (sections 325D.01 to 325D.08), the unlawful trade practices act (sections 325D.09 to 325D.16), the antitrust act (sections 325D.49 to 325D.66), section 325F.67 and other laws against false or fraudulent advertising, the antidiscrimination acts contained in section 325D.67, the act against monopolization of food products (section 325D.68), the act regulating telephone advertising services (section 325E.39), the prevention of consumer fraud act (sections 325F.68 to 325F.70), and chapter 53A regulating currency exchanges and assist in the enforcement of those laws as in this section provided.

* * *

Subd. 3a. Private remedies. In addition to the remedies otherwise provided by law, any person injured by a violation of any of the laws referred to in subdivision 1 may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court. The court may, as appropriate, enter a consent judgment or decree without the finding of illegality. In any action brought by the attorney general pursuant to this section, the court may award any of the remedies allowable under this subdivision.